

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE BELCHER,

Defendant-Appellant.

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UNPUBLISHED

March 18, 2003

No. 239353

Wayne Circuit Court

LC No. 01-002808

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Defendant was charged with armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a bench trial, he was convicted of larceny from a person, MCL 750.357, and felony-firearm. He was later sentenced to two years' probation for the larceny conviction, to be served consecutively to the mandatory two-year prison term for felony-firearm. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *Id.* The trial court's factual findings are reviewed for clear error. MCR 2.613(c). A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The elements of larceny from a person are (1) an actual or constructive taking of goods or property, (2) the property belongs to another, (3) the property is taken from the victim's person or from his presence and immediate area of control, and (4) a carrying away or asportation done (a) with felonious intent, and (b) without the owner's consent and against his will. *People v Ainsworth*, 197 Mich App 321, 324; 495 NW2d 177 (1992). Larceny is a specific intent crime. *Id.* If a defendant acts under a claim of right to the property taken, the element of felonious intent is lacking and there is no crime. *People v Pohl*, 202 Mich App 203, 205; 507 NW2d 819 (1993). A claim of right requires that the defendant have a good faith belief that the property is his and that he is entitled to its possession.

Defendant contends that because the car belonged to him and not to Legette, he had a good faith belief that he was entitled to the vehicle and he did not take the property of another. Defendant's claim is without merit. Larceny is not limited to taking property away from the person who holds legal title to the property. *People v Sheldon*, 208 Mich App 331, 334; 527 NW2d 76 (1995). In addition to the titleholder, a property owner includes a person who has rightful possession and control of the property. *Id.*; *Pohl, supra*. Therefore, if the owner of a vehicle takes it without consent from a mechanic who has a possessory interest in it because the owner has not paid for repairs, a larceny has been committed. *Sheldon, supra* at 335.

In this case, the trial court rejected as incredible defendant's testimony that the mechanic voluntarily released the car so defendant's nephew could take it for a test drive and apparently believed the mechanic's testimony that he turned over the keys without first receiving payment because defendant displayed a weapon. Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. MCR 2.316(c); *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). The evidence was clearly sufficient to establish a larceny from a person and felony-firearm.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Janet T. Neff  
/s/ Hilda R. Gage